Office - Supreme Court, U. S.
FILED
APR 7 1941
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

JAMES W. ROLAND
Petitioner and appellant

v.

PORT COMPRESS COMPANY
Respondent and appellee

TRANSCRIPT OF RECORD
from the County Court of Nueces County,
State of Texas.

I N D E X

	Page
Transcript of Judgment from Justice's Court.....	1
Plaintiff's affidavit of inability to pay jury fee.....	3
Plaintiff's affidavit of inability to pay costs or give security therefor and order.....	4
Commission, Interrogatories, & Precept.....	5
Answers.....	9
Judgment.....	11
Motion for new trial.....	12
Findings of fact & conclusions of law.....	13
Docket entry.....	14
Bill of costs.....	15
County Clerk's Certificate.....	16

Transcript of judgment from Justice Court.

Filed Nov. 8, 1940

Transcript of Judgment from Justice's Court

Precinct No. One, Corpus Christi, Nueces County, Texas, Joe D. Browning, J. P.

James W. Roland Plaintiff No. 3556 — Jack K. Pedigo Plaintiff's Attorney

vs — Kemp, Lewright, Dyer, Wilson & Sorrell, Defendant's Attorney

Port Compress Co., a Corp. Defendant

JUSTICE'S COSTS	Houston Plaintiff Dolls. Cts.	here Defendant Dolls. Cts.
Docketing	.10	.10
Citation	1.00	
Entering Judgment	.50	.50
Filing Paper	.05	.40
Taxing Costs and Copy thereof	.10	.10
Making Transcript	1.50	1.50
CONSTABLE'S COSTS		
Serving Citation	1.30	
Total Costs	4.55	2.60

Suit upon Debt & Damages for $51.25 of date __ Due__Interest at __

Filed 16 day of April 1940 Citation issued the__day of__19__

Returnable to __Term, 19__ and placed in the hands of__Mailed to the sheriff of__Returned__Executed __ day of__19__

Pauper's oath filed 4-16-40

Citation filed 4-16-40

Plaintiff's original petition filed 4-16-40

Defendant's original answer filed 4-16-40

Plea of Privilege filed 4-16-40

Transcript of Judgment filed 4-16-40

Application for Commission for Deposition; precept and officers

return issued 5-20-40

Application returned and executed 5-21-40

Depositions filed 7-18-40

Plaf. by trial amendment & oral pleadings sues for $51.25 instead of $116.25

Judgment rendered in favor of defendant and plaintiff gives notice of appeal 10-31-40

Transcript made and papers transferred to County Court 11-7-40

No. 3556

JAMES V. HOLAND
VS
PORT COMPRESS COMPANY

IN JUSTICE'S COURT, PRECINCT 1, PLACE 2, NUECES COUNTY, TEXAS.

The above styled and numbered cause came on regularly for trial on the 15th day of October, 1940, and came plaintiff by his attorneys of record, and came defendant by its attorneys of record, and announced ready for trial; whereupon, the matters of fact as well as of law were submitted to the Court, and the Court, after hearing the case, took the matter under advisement until the 31st day of October, 1940, whereupon the Court concluded that the plaintiff should take nothing by reason of his suit;

IT IS, ACCORDINGLY, ORDERED, ADJUDGED AND DECREED by the Court, that the plaintiff, James V. Holand, take nothing by reason of his suit, and that defendant, Port Compress Company, go hence without day, and that all costs of this proceeding by adjudged against the plaintiff, for which, execution may issue; whereupon the plaintiff then and there, in open court, excepted and gave notice of appeal to the County Court in and for Nueces County, Texas.

Joe D. Browning, Justice of the Peace
Prec. 1, Place 2, Nueces County, Texas.

THE STATE OF TEXAS)
COUNTY OF NUECES)

I, Joe D. Browning, Justice of the

Peace, do hereby certify that the above and foregoing is a true and correct Transcript of the entries on my docket, on page 118, Vol. 8, in the cause of James W. Roland vs. Port Compress Co. and that the foregoing Bill of Costs is a true and correct statement of the costs incurred in said cause to this date.

Witness my official signature, at Corpus Christi this 7th day of November 1940.

Joe D. Browning, Justice of the Peace
Precinct No. One, Nueces County, Texas.

ENDORSED: No. 3496. No. 3556. TRANSCRIPT OF JUDGMENT FROM JUSTICE'S COURT Precinct No. one. James W. Roland vs. Port Compress Co. A Corp. Issued 7 day of Nov. A.D.1940. Joe D. Browning, J. P. Precinct No. one, Nueces Co., Texas. FILED NOV 8 1940. Mrs. HENRY E. COUCHE County Clerk, Nueces County, Texas. By E. D. Rudolph, Deputy.

* * * * * * *

Plaintiff's affidavit of inability to pay jury fee.

Filed Dec. 7, 1940

JAMES W. ROLAND Plaintiff	)	IN THE JUSTICE'S COURT,
vs	No. 3556	PRECINCT NUMBER ONE, PLACE TWO, NUECES COUNTY, TEXAS.
PORT COMPRESS COMPANY Defendant		

Before me, the undersigned authority, on this day personally appeared James W. Roland, who on his oath stated that he is the plaintiff in the above entitled and numbered cause, that he is unable to make the deposit of three dollars jury fee required by law to be made with his application therefor and that he cannot, by the pledge of property or otherwise, obtain the money necessary for that purpose.

James W. Roland

Sworn to and subscribed before me, by the said James W. Roland, this 24th day of September, 1940, to certify which witness my hand and seal of office.

(Harris Co., Tex. L.S.) Gerald S. Gordon,

Notary Public, Harris County, Texas.

XLNORSED: 3496. FILED DEC 7 1940. MRS. HENRY E. GOUGER, County Clerk, Nueces County, Texas. By H. D. Rudolph, Deputy.

* * * * * *

Plaintiff's affidavit of inability to pay costs or give security therefor and order.

Filed Nov. 8, 1940

JAMES W. ROLAND	IN THE JUSTICE COURT OF
VS	HARRIS COUNTY, TEXAS,
PORT COMPRESS COMPANY	PRECINCT NUMBER ONE.

No. _____.

Now Comes James W. Roland, Plaintiff in the above entitled and numbered cause and after being placed upon oath and being duly sworn, says and states that he is too poor to pay the costs of this Court, and is unable to give security therefor, and requests permission to file this suit without the customary costs.

James W. Roland

SWORN TO AND SUBSCRIBED BEFORE ME by the said James W. Roland this 30th day of March, A.D. 1940, to certify which, witness my hand and seal of office.

(Harris Co., Tex. L.S.) Gerald S. Gordon, Notary Public In and for Harris County, Texas.

ORDER

The affidavit of James W. Roland, Plaintiff in the above entitled and numbered cause, and the contest thereof, coming on to be heard, and the Court having tried and considered the same, finds that James W. Roland is too poor to pay the costs herein or to give security therefor, and it is accordingly ordered that the said James W. Roland be admitted to sue herein as a poor person without paying or giving any security for payment.

Approved 3/30/40 _____ JUDGE

ENDORSED: #3496. FILED MAR 30 1940 W. C. Hagan, J.P.PCT. No. 1, HARRIS COUNTY, TEX. #3556. FILED 4-16-1940. Joe D. Browning, Justice of the Peace, Precinct 1, Place 2. FILED NOV 8 1940. Mrs. HENRY E.

COUGER, County Clerk, Nueces County, Texas. By H. D. Rudolph, Deputy.

* * * * * *

Commission, Interrogatories, & Precept.

Filed Dec. 6, 1940

THE STATE OF TEXAS, TO ANY NOTARY PUBLIC OF HARRIS COUNTY, TEXAS, GREETINGS:

You are hereby authorized and required to summon James W. Roland, resident of your county, before you forthwith, and his answers to take under oath to the accompanying direct interrogatories propounded to him, in a certain cause now pending in the County Court of Nueces County, Texas, wherein James W. Roland is plaintiff and Port Compress Company is defendant, and to return without delay this commission and accompanying interrogatories, and the answers of the witness thereto, to the undersigned clerk of the County Court, Nueces County, Texas, whose official and postoffice address is Nueces County Courthouse, Corpus Christi, Nueces County, Texas.

Witness Mrs. Henry E. Couger, Clerk of the County Court, Nueces County, Texas.

Given under my hand, this 2 day of Dec., 1940, at my office in the city of Corpus Christi, Texas.

Mrs. Henry E. Couger, Clerk of the County Court, Nueces County, Texas.
By H. D. Rudolph, Deputy.

(Nueces County Court Seal)

Issued this 2 day of Dec., 1940

Mrs. Henry E. Couger, Clerk of the County Court, Nueces County, Texas.
By H. D. Rudolph, Deputy.

JAMES W. ROLAND, Plaintiff VS PORT COMPRESS COMPANY Defendant	No. 1496	In the county court, Nueces County, Texas.

TO PORT COMPRESS COMPANY, DEFENDANT, or KEMP, LEWRIGHT, DIBB, WILSON AND SORRELL, ITS ATTORNEYS OF RECORD:

You will take notice that five days after the service of a copy hereof, and of the attached interrogatories, I intend to and shall apply to the clerk of the County Court of Nueces County, Texas, for a commission to take the answers of the plaintiff James W. Roland, who is to be found in Harris County, Texas, to such interrogatories, which deposition when taken will be used in evidence in the above entitled and numbered cause.

James W. Roland, Plaintiff.

By: Jack K. Pedigo,
Attorney for Plaintiff.

Interrogatories to be propounded to James W. Roland, plaintiff:

Interrogatory 1-what is your name and where do you reside?

Interrogatory 2-did you ever reside in any city or cities of Texas other than your present place of residence?

Interrogatory 3-what city or cities?

Interrogatory 4-when did you live in Corpus Christi, Texas?

Interrogatory 5-while you lived in Corpus Christi, Texas, did you ever work for any person, firm, company or corporation there?

Interrogatory 6-what company or corporation?

Interrogatory 7-during what year did you work for the Port Compress Company?

Interrogatory 8-when, during 1939, did you begin working for the Port Compress Company?

Interrogatory 9-after that date how many weeks did you work for the Port Compress Company?

Interrogatory 10-what did the Port Compress Company pay you per hour for your work?

Interrogatory 11-how many hours did you work for the Port Compress Company the first week you were employed?

Interrogatory 12-how many hours did you work for them the second week?

Interrogatory 13-how many hours did you work for them the third week?

Interrogatory 14-how many hours did you work for them the fourth week?

Interrogatory 15-how many hours did you work for them the fifth week?

Interrogatory 16-how many hours did you work for them the sixth week?

Interrogatory 17-about when did you stop working for the Port Compress Company?

Interrogatory 18-what were your exact duties while you were employed by the Port Compress Company,

Interrogatory 19-did you perform any other duties while in the employ of the Port Compress Company?

Interrogatory 20-were you ever, during your employment with the Port Compress Company, engaged in the actual operations of ginning or compressing cotton?

Interrogatory 21-then your job was to transfer, by means of a tractor cotton from the Port Compress Company's plant to ships docked in Corpus Christi's harbor?

Interrogatory 22-were these ships on which you loaded cotton American ships or vessels of foreign nations?

Interrogatory 23- did you know the destination, that is, where these ships were going after they left Corpus Christi?

Interrogatory 24-how did you know that?

Interrogatory 25-then you learned where the ships were going by talking to the members of the ships' crew and/or their captains or officers?

Interrogatory 26-did you ever notice on the American ships the names of any American cities painted on the side or stern of these ships?

Interrogatory 27-what cities' names were painted on the American ships to which you transferred cotton?

Interrogatory 28-under what flags were the various ships, to which you transferred cotton, flying?

Interrogatory 29-how did you know what flag they were sailing under?

Interrogatory 30-then some of the ships to which you transferred cotton were foreign vessels, that is, they were sailing under flags

of nations other than the flag of the United States of America?

Jack K. Pedigo,
Attorney for Plaintiff

JAMES W. ROLAND Plaintiff VS PORT COMPRESS COMPANY Defendant	No. 3496	IN THE COUNTY COURT NUECES COUNTY, TEXAS.

THE STATE OF TEXAS, TO THE SHERIFF OR ANY CONSTABLE OF NUECES COUNTY-GREETING:

You are hereby commanded to serve the Port Compress Company, the defendant in the above-stated cause, by Kemp, Lewright, Dyer, Wilson and Correll, its attorney's of record, with the accompanying certified copy of notice and interrogatories propounded by the plaintiff's attorney, Jack K. Pedigo, in said cause to James W. Roland, who resides in the county of Harris, in the State of Texas.

Herein fail not, but of this writ, and how you have executed the same, make due return within five days after service.

Witness, Mrs. Henry K. Couger, Clerk of the County Court, Nueces County, State of Texas.

Given under my hand, this 26 day of November, 1940.

(Nueces County Court Seal)

Mrs. Henry K. Couger, Clerk;
County Court, Nueces County, Texas.
By H. D. Rudolph, Deputy.

Issued this 26 day of November, 1940.

Mrs. Henry K. Couger, Clerk
County Court, Nueces County, Texas.
By H. D. Rudolph, Deputy.

OFFICER'S RETURN

Came to hand on the 26th day of November, 1940, at 10 o'clock a.m., and executed on the 26th day of November, 1940, at 10 o'clock a.m., at Corpus Christi Texas, by delivering to J. E. Correll, one of the attorneys for the plaintiff, in person the accompanying certified copy of notice and interrogatories and a true copy of this writ. The

distance actually traveled by me in serving such process was $1.00 __miles, and my fees are____

Fee $1.30

JOHN B. HARNEY, Sheriff of Nueces County, Texas.
By: Ross Stephenson,
Deputy Sheriff, Nueces County, Texas.

ENDORSED: #3496. FILED DEC 6 1940. MRS. HENRY E. GOUGER, County Clerk, Nueces County, Texas. By E. D. Rudolph, Deputy.

- - - - -

Answers.

Filed Dec. 6, 1940.

JAMES W. ROLAND
Plaintiff

VS

PORT COMPRESS COMPANY
Defendant

No. 3496

IN THE COUNTY COURT,
NUECES COUNTY, TEXAS.

Answers and deposition of James W. Roland, whose residence is the City of Houston, Harris County, State of Texas, to the accompanying interrogatories propounded to him in the above-entitled cause, taken before WILLIAM E. LADIN, Notary Public, Harris County, Texas, in accordance with the accompanying commission.

ANSWERS OF THE WITNESS-----TO THE DIRECT INTERROGATORIES:

To the first interrogatory he answers: James W. Roland, 2207 Canal St., Houston, Harris County, Texas.

To the second interrogatory he answers: Yes. Corpus Christi.

To the third interrogatory he answers: Corpus Christi, Texas.

To the fourth interrogatory he answers: From 1937 until Sept. 7, 1939.

To the fifth interrogatory he answers: Yes. Port Compress Co.

To the sixth interrogatory he answers: Port Compress Company.

To the seventh interrogatory he answers: 1937, 1938, 1939.

To the eighth interrogatory he answers: July 29, 1939.

To the ninth interrogatory he answers: Five (5) weeks and Three (3) days.

To the tenth interrogatory he answers: Twenty-five (25¢) Cents per hour.

9 To the eleventh interrogatory he answers: Seventy (70) hours.

To the twelfth interrogatory he answers: Sixty (60) hours.

To the thirteenth interrogatory he answers: Seventy (70) hours.

To the fourteen th interrogatory he answers: Sixty (60) hours.

To the fifteenth interrogatory he answers: Eighty-five (85) hours.

To the sixteenth interrogatory he answers: Thirty (30) hours.

To the seventeenth interrogatory he answers: September 6, 1939

To the eighteenth interrogatory he answers: Tractor Driver

To the nineteenth interrogatory he answers: No.

To the twentieth interrogatory he answers: No.

To the twenty-first interrogatory he answers: Yes

To the twenty-second interrogatory he answers: Vessels of foreign nations.

To the twenty-third interrogatory he answers: I was told by the foremen they were going to Japan and France.

To the twenty-fourth interrogatory he answers: The foremen would tell me, and I had my papers, and the names of the ships were there, and I could see they were foreign boats.

To the twenty-fifth interrogatory he answers: Yes. The foremen told me

To the twenty-sixth interrogatory he answers: No.

To the twenty-seventh interrogatory he answers: I did not see any names, but I knew that they were Lykes Bros. ships.

To the twenty-eighth interrogatory he answers: Foreign Flags. Japan, France, Britain.

To the twenty-ninth interrogatory he answers: I looked up at the flag staff while circling around wharf in my tractor, and I had my papers.

To the thirtieth interrogatory he answers: yes.

NO CROSS INTERROGATORIES--

James W. Roland
(James W. Roland)

I, James W. Roland, do hereby swear, under oath, that the answers given by me above are true.

James W. Roland

THE STATE OF TEXAS ((

COUNTY OF HARRIS ((I, WILLIAM E. LADIN, Notary Public, Harris County, Texas, do hereby certify that the foregoing answers of James W. Roland, the witness before named were signed and sworn to before me on the 4th day of December, 1940, by the said witness.

Given under my hand and official seal this the 4th day of December, 1940.

(Harris Co., Tex., L.S.) William E. Ladin, Notary Public, Harris County, Texas.

ENDORSED: #3496. FILED DEC 6 1940. MRS. HENRY E. SCOGGIN, County Clerk, Nueces County, Texas, By H.D. Rudolph, Deputy.

\- - -

Judgment.

Entered Dec. 7, 1940.

NO. 3496

JAMES W. ROLAND | IN THE COUNTY COURT OF

VS. |

PORT COMPRESS COMPANY | NUECES COUNTY, TEXAS.

BE IT REMEMBERED that on the 7th day of December, 1940, the above cause came on to be heard, whereupon plaintiff announced ready for trial, and defendant announced ready upon its plea in abatement; and the Court, after hearing the plea in abatement, was of the opinion that the same should be sustained and this cause dismissed, and it further appearing to the Court that the term of Court expired on the 7th day of December, 1940, it is further the opinion of the Court that this order should be entered nunc pro tunc:

IT IS, THEREFORE, ACCORDINGLY, ORDERED, ADJUDGED AND DECREED by the Court that this cause be and it is hereby in all things dismissed, at plaintiffs, cost, to which action of the Court, be it remembered, the plaintiff then and there, in open Court, excepted; and it is further ORDERED that execution may issue herein for and on behalf of the Clerk, for his costs.

dated Dec. 13, 1940. A.C. Gandy, Judge.

ENDORSED: NO. 3496. IN THE COUNTY COURT OF NUECES COUNTY, TEXAS. JAMES W. ROLAND VS. PORT COMPRESS COMPANY. JUDGMENT.

- - - - ,

Motion for new trial.

Filed Dec. 7, 1940.

NO. 3496

James W. Roland, Plaintiff,
vs.
Port Compress Co., Defendant.

In the County Court in and for Nueces County, Texas.

TO SAID HONORABLE COURT:

Plaintiff in the above entitled and numbered cause, by this, his motion for new trial, moves the Court to set aside the judgment heretofore rendered against him in this cause, and to grant a new trial herein, upon the following grounds, to wit:

That the court erred in sustaining paragraph one of defendant's plea in abatement on file herein, in that paragraph one is not in the nature of a plea in abatement and contains no allegations of fact which would support the court's ruling; that there are no legal or statutory grounds alleged in said plea in abatement which can sustain the court's ruling.

That the court erred in sustaining paragraphs two, three and four of defendant's plea in abatement on file herein in that in none of said paragraphs was there alleged any allegations of fact which would support the court's ruling; that there are no legal or statutory grounds alleged in said plea in abatement which can sustain the court's finding.

That the whole of said plea in abatement is nothing more than an exception and denial of plaintiff's cause of action, and that the court erred as a matter of law in taking cognizance of, and sustaining, said plea in abatement, for the reason that no where in said plea of abatement is there set out any allegations of fact which would support

any statutory or legal grounds for abatement of suit.

That because of the insufficiency of the above described pleading the court erred in considering the same because it is within the exclusive province of the jury.

WHEREFORE, the plaintiff prays that the judgment herein be set aside and that it be awarded a new trial.

J. K. Pedigo
Jay Kirkman
Attorneys for Plaintiff
By Jack K. Pedigo

Motion for new trial overruled this 12/7/40.

ENDORSED: No. 3496. FILED DEC 7 1940. MRS. HENRY V. GOUGER, County Clerk, Nueces County, Texas. By W. D. Rudolph, Deputy.

* * * * * *

Findings of fact & conclusions of law.

Filed Dec. 27,1940.

JAMES A. HOLLAND		IN THE COUNTY COURT
VS	No. 3496	COUNTY OF NUECES
FORT WORTH LOAN COMPANY		STATE OF TEXAS

In response to the request of plaintiff in the above entitled and numbered cause, I make and file the following as my findings of fact and conclusions of law therein:

FINDINGS OF FACT

The court can make no findings of fact for the reason that the cause was determined upon the pleadings. The defendant's Plea in Abatement was sustained in all parts and the cause dismissed without submission of any fact issues to the jury requested by plaintiff and without the hearing of any evidence by the court and without going into the merits of the case.

CONCLUSIONS OF LAW

The plaintiff plead orally as allowed by law, alleging a cause of action by virtue of the Federal Fair Labor Standards Act for compensation for unpaid overtime wages, liquidated damages, and

attorney's fees; to which pleading defendant filed a plea in abatement which the court in all parts sustained without hearing any evidence and solely upon argument of counsel, and took no further cognizance of the cause; concluding as a matter of law that said cause should be dismissed for the following reasons:

(1) That defendant was not within the scope and regulations of the Federal Fair Labor Standards Act, in that defendant Company was engaged in intrastate commerce.

(2) That defendant's services were strictly done within the area of production of crop commodity.

(3) That plaintiff was not employed by the defendant in excess of 14 weeks during the entire year.

(4) That defendant is engaged in compressing cotton and is exempt from the regulations of the Federal Fair Labor Standards Act.

A. C. Handy, Judge of the County Court, Reeves County, State of Texas.

Entered nunc pro tunc Dec. 7th, 1940, this 27th day of Dec., 1940

ENDORSED: #3496. FILED DEC 27 1940. WM. PENNY H. GOUGER, County Clerk, Reeves County, Texas. By L. P. Fritz, Deputy.

* * * * * *

Docket Entry.

Entered Dec. 7, 1940

Vol. H, Page 272 County Court Minutes.

12/7/40. # 3496. James T. Roland vs. Port Compress Co., Plea in abatement sustained to which plaintiff excepted. Plaintiff give notice that he requests new trial. Plaintiff filed motion for new trial. Motion for new trial overruled. Plaintiff gave notice of appeal.

* * * * * * *

BILL OF COSTS

No. 3496 James H. Roland Plff vs. Port Empress Co. Deft.

Mr. James H. Roland Dr.

To OFFICERS OF COURT

The Costs accrued in the above entitled cause to adjournment of Feb 28 19 41

CLERK'S FEES	Dollars	Cents
Docketing Cause, 10c		10
Docketing Motions, 10c		
Issuing Writs Citation, 50c		
Issuing Writs Citation in Error, 50c		
Issuing Subpenas for Witness, 25c		25
Additional Names, 05c		
Issuing Notices for Posting, 75c		
Issuing Commission to take Deposition, 50c		50
Issuing Execution, 50c Precept to same Attorney		50
Issuing Order of Sale, 50c		
Issuing Writ of Attachment, 50c		
Issuing Writ of Possession, 50c		
Issuing Writ of Injunction, 50c		
Issuing Writ of Sequestration, 50c		
Issuing Writ of Garnishment, 50c		
Issuing Writ of Scire Facias, 50c		
Issuing Writ of , 50c		
Entering Appearance, 05c		05
Entering Continuance, 10c		
Entering Order, 15c		
Entering Judgment, 50c		50
Entering Words in Excess of 100 and under 200, 25c		
Entering Words in Excess of 200, per 100, 10c		
Certificate of any Fact of Record, with Certificate and Seal, 50c		50
Recording Return on Citation, 50c		
Recording Return on Notice, 50c		
Recording Return on		
Recording Return on Execution, 50c		
Recording Return on Order Sale, 50c		
Receiving and Recording Verdict of Jury, 25c		
Recording Words in Excess of 300, per 100, 10c		
Filing Papers, 05c (16)		80
Swearing Witness, 10c		
Swearing and Impaneling Jury, 25c		
Administering Oath without seal, 15c		
Administering Oath with seal, 25c		
Certified Cop Petition, per 100 words, 10c		
Certified Cop Interrog		
First 200 words, per 100, 15c		
Over 200 words, per 100, 10c		
Taking Deposition, each 100 words, 15c		
Approving Bond except for costs, $1.00		
Transcript on Appeal, per 100 words, 10c	40	00
Taxing Costs and Copy, 25c		25
Total Clerk's Fees	43	25
County Judge's Fee	3	00
Jury Fee Deposited by		
Printer's Fee Due to		
Stenographer's Fee		
Attorney's Fee Due to		

SHERIFF'S FEES	Dollars	Cents
Executing Citation and miles, $1.00		
Executing Attachment and miles, $2.00		
Executing Sequestration miles, $2.00		
Executing Garnishment miles, $1.00		
Executing Possession miles, $3.00		
Executing Injunction miles, $1.50		
Executing Restitution miles, $3.00		
Summoning Witness and miles, 50c	1	30
Levying Execution, $1.00		
Return of Execution, $1.00		
Posting Advts, for Sale under $1.00		
Taking Care of Property		
Making Deed, $2.00		
Making Bill of Sale, $2.00		
Commission		
Serving 1 Notices, $1.00 & Mileage	1	30
Returning Writ of		
Copy of Attachment Writ and Return for Record, $1.00		
Jury Fee, 50c		
Posting Notices other than Advertising, $1.00		
Approving Bond and Return of Same, $1.00		
Endorsing Forfeiture of Bond, 50c		
Total Sheriff's Fees	2	60
Witness Fees		
Total Witness Fees		
Miscellaneous Costs		
Total Miscellaneous		

RECAPITULATION		
Clerk's brought forward	43	25
Sheriff's brought forward	2	60
County Judge brought forward	3	00
Co. Mess Co. brought forward	4	55
Printer's Press Co. brought forward	2	60
Stenographer's brought forward		
Depositions brought forward	12	50
Witness brought forward		
Miscellaneous brought forward		
GRAND TOTAL	68	70
By Cash Paid		
By Cash Paid		
By Cash Paid		
BALANCE DUE	68	70

15

E-512

3496

File No.

BILL OF COSTS

IN THE COUNTY COURT

Of NUECES County, Texas

Feb. Term, 19 41

James Roland

VS.

Port Campuzas Co.,

Issued FEB 2 8 1941

MRS. HENRY E. GOUGER Clerk.

By H. D. Rudolph Deputy.

Received of:

$ in payment of Costs.

19

By

BURKETT PRINTING COMPANY, DALLAS

THE STATE OF TEXAS }

County of NUECES }

I, MRS. HENRY E. GOUGER Clerk of the County Court in and for said County and State hereby certify the above to be a correct account of the Costs in the above entitled and numbered suit up to this date

WITNESS my hand and the seal of said County affixed at office in Corpus Christi this the 28 day of Feb. 19 41

MRS. HENRY E. GOUGER

Clerk County Court NUECES County.

By H. D. Rudolph Deputy.

THE STATE OF TEXAS | OFFICE OF THE COUNTY CLERK

COUNTY OF NUECES | NUECES COUNTY, TEXAS

I, Mrs. Henry E. Gouger, Clerk of the County Court of Nueces County, State of Texas, do hereby certify that the foregoing typewritten pages numbered 1 to 14 inclusive, contain a true and complete transcript of all papers and instruments on file in this court, together with the "Transcript of Judgment" from the Justice's Court, and proceedings had in said County Court in the cause of James W. Roland, plaintiff and appellant, against Port Compress Company, defendant and appellee, being cause #3496 on the Civil Docket of the County Court, as the same remains of record and on file in said office; the said typewritten pages do not include any instruments filed in the Justice's Court of Harris County, Texas, nor of the Justice's Court of Nueces County, Texas, except that affidavit of inability to pay court costs was filed in J. P. Court, Nueces County.

In testimony whereof I have caused the seal of said County Court of Nueces County, Texas, to be hereunto affixed at the City of Corpus Christi, Texas, this the 4th day of March, A. in the year of our Lord 1941.

Mrs. Henry E. Gouger

Clerk of the County Court,

Nueces County, Texas.

By H. D. Rudolph, Deputy.

Supreme Court of the United States

No. ———— , *October Term, 1940*

JAMES W. ROLAND,

Petitioner,

vs.

PORT COMPRESS COMPANY

- - - - -

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI

UPON CONSIDERATION of the application of counsel for the Petitioner,

IT IS ORDERED that the time within which to file petition for certiorari in the above-entitled cause be, and the same is hereby, extended to, and including, April 7th, 1941.

s/ Hugo L. Black
Associate Justice of the Supreme Court of the United States.

Dated this 7th day of March, 1941

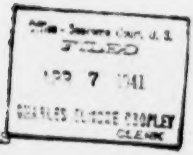
File No. .....

Supreme Court of the United States

OCTOBER TERM, 193

Term No. .....

Filed ....., 193



SUPREME COURT OF THE UNITED STATES

_____TERM, 1941.

No. 929

JAMES W. ROLAND,
Petitioner and Appellant below,

Vs.

PORT COMPRESS COMPANY,
Respondent and Appellee below.

PETITION FOR WRIT OF CERTIORARI TO THE COUNTY COURT OF NUECES COUNTY, TEXAS, AND BRIEF IN SUPPORT THEREOF.

~~Mr. Lee Pressman of Washington, D. C.~~, Messrs. Jack K. Pedigo and Jay Kirkman of Corpus Christi, Texas, Mr. Gerald S. Gordon of Houston, Texas, and Mr. William E. Jetter of Ann Arbor, Michigan, counsel for Petitioner.

SUBJECT INDEX

	Page
Petition for writ of certiorari	1
Summary statement of matter involved	1
Basis of jurisdiction	3
Statement of the questions presented	3
Reasons relied upon for allowance of writ	4
Brief in support of petition for writ of certiorari	6
Jurisdiction	6
Statement of the case	6
Assignment of errors	6
Argument	6
Point one	6
Point two	8
Point three	10
Conclusion	13

Table of Cases Cited.

Akron, C. & Y. R. Co. v. United States, 261 U. S. 184, 200	7
Barnes v. Sparks, 131 S. W. 610	2
Blalock v. Jones, 1 S. W. (2) 400	9
Brown v. Brown, 65 S. W. (2) 392	9
Clarksburg-Columbus Short Route Bridge Co. v. Woodring, 89 F. (2) 788	8
First National Bank of Guthrie Center v. Anderson, 269 U. S. 341	3
Ives v. South Buffalo R. Co., 201 N.Y. 271, 94 N. E. 431	6
John Christensen & Co.v. McNeil, 251 S. W. 381	9
M. P. Ry. Co. v. Haynes, 18 S. W. 608	9
Matrimonial Mutual Association of Texas v. Rutherford, 41 S. W. (2) 719	10
McCall v. Owens, 68 S. W. (2) 1089	9
McCorkey v. Henderson, 24 Tex. 212	9
McKnight v. Washington National Insurance Co., 131 S. W. (2) 1072	9
North Carolina R. Co. v. Zachary, 58 L. Ed. 591	3
Ohio Bell Tel. Co. v. Public Utilities Commission of Ohio, 301 U. S. 292, 304	8
Phipps v. Hemphill, 267 S. W. 310	9
Roberts v. Anderson, 66 F. (2) 874	8
Schaff v. Nash, 193 S. W. 469	9
Stafford v. Wallace, 258 U. S. 495	12
Supreme Lodge, etc. v. Knights of Pythias of North America, etc. 102 Miss. 280, 59 So. 88	3, 11
Windsor v. McVeigh, 93 U. S. 274	7

Table of Statutes Cited.

Judicial Code, as amended, Title 28, Sec. 344(b), U.S.C.A.	3
Fair Labor Standards Act of 1938, Title 29, Ch. 8, U.S.C.A.	1, 11
Sec. 203 (b)	12
Sec. 206 (a)	12
Sec. 207 (a)	11
Sec. 207 (c)	12, 13

Page

Texas Revised Civil Statutes 1925:
Art. 1319, as amended 3
Art. 2123 10
Art. 2178..... 2
Art. 2249 3
Art. 2368 2

Textbooks and Encyclopedias Cited

American Jurisprudence, Vol. 12, §608, p. 303..... 7
Corpus Juris Secundum, Vol. 16, §622, p. 1266, 1266 7, 8
Ruling Case Law, Vol. 6, §442, p. 446..... 7
Vol. 6, §446, p. 450..... 7
Vol. 6, §449, p. 453..... 8
Vol. 6, §450, p. 454..... 8
Texas Jurisprudence:
Vol. 1, §131, p. 180, 181..... 9
Vol. 9, §132, p. 576..... 7

SUPREME COURT OF THE UNITED STATES

_____TERM, 1941

No. _____

JAMES W. ROLAND,
Petitioner and Appellant below,

Vs.

PORT COMPRESS COMPANY,
Respondent and Appellee below.

PETITION FOR WRIT OF CERTIORARI TO THE COUNTY COURT OF NUECES COUNTY, TEXAS, AND BRIEF IN SUPPORT THEREOF.

TO THE HONORABLE CHARLES EVANS HUGHES, CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner respectfully shows:

I.

Summary Statement of the Matter Involved.

On or about the 29th day of July, 1939, your petitioner, James W. Roland, was employed by the Port Compress Company at Corpus Christi, Texas. Under the terms of his employment, Roland was to, and did, transfer by means of a tractor cotton from the Port Compress Company's plant to various ships docked at the Port of Corpus Christi. Roland was so employed by the Port Compress Company for a period of slightly more than five weeks. He was paid at the rate of 25¢ per hour. During Roland's first week of employment he worked 70 hours, the second week he worked 60 hours, the third week 70 hours, the fourth week 60 hours and during the fifth week he worked 85 hours.

Believing that the Federal Fair Labor Standards Act of 1938, Title 29, Ch. 8, et seq., U.S.C.A., covered his type of employment, and thus that for all the hours worked in excess of forty-four (44) hours in any one week that he should have received pay at the rate of pay and a half, your petitioner, Roland, brought suit in the Justice's Court, Precinct One, Harris County, Texas, against the

Port Compress Company, respondent, for unpaid overtime wages, liquidated damages and reasonable attorneys fees as authorized by the Federal Fair Labor Standards Act. Respondent answered by filing a Plea of Privilege to be sued in Nueces County, Texas, where its principal office is located, in accordance with provision of the Venue Statute of Texas. Said cause was thereupon transferred to the Justice's Court, Precinct One, Place Two, Nueces County, Texas.

On October 15, 1940, the cause was called for trial, and your petitioner herein plead a cause of action under the Federal Fair Labor Standards Act. Said pleading was oral, as authorized by law in our Justice's Courts, Revised Civil Statutes of Texas, 1925, Article 2388, and the respondent herein having plead orally his defense to said cause of action, the cause was submitted to the Justice of the Peace, sitting without a jury, who rendered judgment in favor of respondent against your petitioner herein.

An appeal was taken from said judgment by your petitioner to the County Court of Nueces County,Texas, where the cause came on to be heard de novo, as authorized in appeals from the Justice's Court to the County Court, Revised Civil Statutes of Texas, 1925, Article 2178. On the 7th day of December, 1940, said cause was called for trial, and your petitioner herein and the respondent herein each announced ready for trial. Whereupon your petitioner demanded a trial by jury, which jury was duly impaneled; your petitioner plead orally a cause of action under the Federal Fair Labor Standards Act, such oral pleading being allowed by law, see Statement of Fact and Conclusions of Law, page 13-14 of record, Barnes v. Sparks, 131 S.W. 610, and Phipps v. Hemphill, 267 S.W. 310. Whereupon respondent urged to the Court his "Plea in Abatement" to which your petitioner duly excepted and denied. The jury panel was then retired pending hearing upon respondent's motion to abate the cause.

After argument of counsel and without hearing any evidence whatsoever upon the fact issues raised by said Plea in Abatement, and without submission of any of the fact issues to the jury, demanded by your petitioner, (see Findings of Fact, page 13 of record) the Court sustained in all parts over your petitioner's objection respondent's Plea in Abatement and dismissed the cause.

Your petitioner then immediately filed a motion for new trial, (see page 12,13 of record), which motion was denied by the Court, and then and there in open court counsel for petitioner gave notice of appeal (see page 13,14 of record).

The said County Court of Nueces County, Texas, is by statute the highest Court in this State in which a decision may be had on civil matters not involving more than One Hundred dollars, Revised Civil Statutes of Texas, 1925, Articles 2249 and 1819 as amended. The total amount claimed by petitioner in this suit is Fifty-one and 25/100 ($51.25) Dollars. The decree rendered by said County Court in dismissing said cause is a final judgment.

II.

Basis of Jurisdiction.

1. The date of judgment to be reviewed is December 7, 1940.

2. This Honorable Court has jurisdiction to review the decision of the County Court of Nueces County, Texas, by virtue of Title 28, Sec. 344 (b), U.S.C.A.

3. This is a proper case for the exercise of this Court of its power of review. (See First National Bank of Guthrie Center v. Anderson, 70 L. Ed. 295, 46 S. Ct. 138, 269 U. S. 341; Supreme Lodge etc. v. Knights of Pythias of North America, etc., 108 Miss. 280; North Carolina R. Co. v. Zachary, 58 L. Ed. 891).

III.

Statement of the Questions Presented.

1. Did the County Court of Nueces County, Texas, deny your petitioner the right of due process of law?

2. Did the County Court of Nueces County, Texas, err in sustaining respondent's Plea in Abatement without the hearing of any evidence on fact issues raised thereby, and without the submission of such issues to the jury demanded by your petitioner?

3. Did the County Court of Nueces County, Texas, err in denying petitioner a right claimed under the Federal Fair Labor Standards Act?

IV.

Reasons Relied Upon for Allowance of the Writ.

1. The ruling of the Honorable County Judge in deciding material questions of fact without the taking or hearing of any evidence whatever (see Statements of Fact and Conclusions of Law, page 12, 14 of the record herein) was so arbitrary and baseless as to be a deprivation of due process of law.

2. The judgment of the County Court of Nueces County, Texas, is erroneous in that:

(A) No evidence was heard upon the fact issues raised by respondent's Plea in Abatement.

(B) In all events said fact issues should have been submitted to the jury.

3. The said County Court denied your petitioner a right conferred upon him by virtue of the Federal Fair Labor Standards Act of 1938.

WHEREFORE, your petitioner prays that a Writ of Certiorari issue under the seal of this Court, directed to the County Court of Nueces County, Texas, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said County Court had in the case numbered and entitled on its docket No. 3496, James W. Roland, plaintiff, v. Port Compress Company, defendant, to the end that this cause may be reviewed and determined by this Court, as provided for by the Statutes of the United States; and that the judgment herein of said

County Court be reversed by this Court, and for such further relief as to this Court may seem proper.

Dated March 6, 1941.

JAMES W. ROLAND

By _____,

Jack K. Riggs,

Jay Kirkman,

Gerald L. Gardner

William E. Petter

Counsel for Petitioner

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinions of Courts Below.

There is no reported decision of the County Court of Nueces County, Texas, in this case. Accordingly, the judgment (see page 11 of record) rendered by said Court, together with the Findings of Fact and Conclusions of Law (see page 12,14 of record) comprise, as fully as possible, the opinion or basis for the Court's ruling.

II.

Jurisdiction.

For basis of jurisdiction of this Court see petition, page 3.

III.

Statement of the Case.

For statement of the case see petition, page 1.

IV.

Assignment of Errors.

Petitioner assigns as errors the rulings of the County Court upon the questions set forth in the petition, page 3.

V.

Argument.

Point 1.

THE DECIDING OF MATERIAL QUESTIONS OF FACT BY A COURT, WITHOUT THE HEARING OF ANY EVIDENCE WHATEVER, IS SO ARBITRARY AND BASELESS AS TO BE A DEPRIVATION OF DUE PROCESS OF LAW.

In this case, involving a Federal statute, your petitioner is requesting a Writ of Certiorari for the reason that in the trial of the cause below the County Court of Nueces County, Texas, did decide material questions of fact without hearing any evidence whatever, (see Statements of Fact and Conclusions of Law, page 12,14 of record) thereby denying petitioner due process of law as guaranteed him by the United States Constitution.

A review of Court decisions will reveal that no satisfactory definition of due process has been formulated and the question for solution in each case is to be determined in view of the particular facts and circumstances. Further, it is well recognized that the mere fact that a person is unsuccessful in a Court in a matter involving life, liberty, or property does not show that there has been a violation of the due process of law guaranty; provided, there has been a full hearing or opportunity for hearing, 16 C.J.S. #622, p. 1265; 6 R.C.L. #442, p. 446, #446, p. 450. However, if a Court proceeds in such a manner as to deny a party the opportunity to be heard and prosecute his rights, then that Court can be said to have committed a mistake so gross and obvious as to come within the boundary of arbitrary action, thereby committing a violation of the due process guaranty, and any judgment rendered therein is not entitled to respect in any other tribunal, Windsor v. McVeigh, 93 U.S. 274.

The County Court below, in deciding material questions of fact without hearing any evidence whatever and without going into the merits of the case, (see Statements of Fact and Conclusions of Law, page 13,14 of record) denied your petitioner a fair hearing. A fair hearing, as we understand it, is one in which ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety, from the standpoint of justice and law, of the step asked to be taken, 12 Am. Jur. #608, p. 303; 6 R.C.L. #446, p. 450; Akron, C. & Y. R. Co. v. United States, 261 U.S. 184, p. 200. "The right to a hearing as administered in the Courts, requires a judicial examination of every issue that, according to established procedure, may affect the attainment of a legal trial, and in such a trial determine the cause according to law," 9 Tex. Jur. #132, p. 576. That a party is entitled to present evidence in support of his rights can hardly be denied, and to preclude, before any type of judicial or quasi-judicial tribunal, a party

from offering evidence in support of his position is a denial of fair hearing and a fortiori a denial of due process of law, Roberts v. Anderson, 66 F. (2) 874; 16 C.J.S. #622, p. 1265, 1266; Ohio Bell Tel. Co. v. Public Utilities Commission of Ohio, 301 U.S. 292, p. 304; Clarksburg-Columbus Short Route Bridge Co. v. Woodring, 89 F. (2) 788; 6 R.C.L. #449, p. 453, #450, p. 454; Ives v. South Buffalo R. Co., 201 N. Y. 271, 94 N. E. 431.

In the case at Bar inasmuch as the County Judge took upon himself the task of deciding material questions of fact without the determination of such questions by the jury, as requested by your petitioner, and without the hearing of any evidence whatsoever on such questions, it is the belief of your petitioner, in view of the aforementioned authorities, that the Honorable County Judge did deny your petitioner his constitutional right to due process of law.

Point 2.

WHERE AN ISSUE OF FACT, NECESSARY TO THE RENDITION OF A PROPER JUDGMENT, IS RAISED BY THE PLEADINGS A JUDGMENT RENDERED BY THE COURT WITHOUT HEARING ANY EVIDENCE OR PROOF ON SUCH ISSUES IS ERRONEOUS AND WILL NOT SUPPORT THE JUDGMENT.

The respondent herein and defendant below, by its Plea in Abatement, raised the following issues of fact:

1. That defendant was not within the scope of the Federal Fair Labor Standards Act in that defendant was engaged in intra-state commerce.

2. That defendant's services were strictly done within the area of production of crop commodity.

3. That plaintiff was not employed by the defendant in excess of fourteen (14) weeks during the entire year.

4. That defendant is engaged in compressing cotton and is exempt from the regulations of the Federal Fair Labor Standards Act.

The matters plead by defendant in abatement of the plaintiff's cause of action, as above set out, all depend upon questions of fact. These facts were not established by evidence or proof, nor was any attempt made to present any proof or evidence on the issues so raised.

It is a fundamental proposition of law that the mere averment of facts set up in abatement of a suit without proof of such facts is insufficient, Schaff v. Nash 193 S.W. 469; Lyons Bros. v. Corley 135 S.W. 603.

Volume One, Texas Jurisprudence, page 181, #131, sufficiently states the law that mere averments of fact without proof are insufficient. This proposition is further affirmed in McCall v. Owens 68 S.W. 2nd 1089. Also, see Brown v. Brown 65 S.W. 2nd 398, and McKnight v. Washington National Insurance Company 131 S.W. 2nd 1072.

Certainly in this cause the matters contained in respondent's Plea in Abatement did not appear on the face of the record so as to enable the Honorable County Judge to decide, as a matter of law, the question raised by the pleadings herein, and the County Judge was in error in overruling petitioner's exception to the respondent's Plea, particularly where the respondent submitted no evidence to support the allegations of his Plea. It can hardly be denied that the burden was on respondent to prove the essential facts set forth in his Plea in Abatement, see 1 Texas Jurisprudence, page 180.

In our own jurisdiction here in Texas, our Courts have repeatedly enunciated the proposition that a judgment to be sustained in a Court of Record must be founded on sufficient facts legally ascertained, see Blalock v. Jones, 1 S.W. 2nd 400; John Christesen & Co. v. McNeil, 251 S.W. 351; McCorkey v. Henderson, 24 Texas 212; M. P. Ry. Co. v. Haynes 18 S.W. 605. And it must follow that even an issue properly raised and

plead, without any evidence to support it, can form no basis for judgment.

It matters not how well a case may be plead. There must be evidence as well as pleading to support a proper judgment and our Texas Courts have repeatedly held that even though some evidence is presented, which, of course, was not done in the case at Bar, such evidence must support the pleadings, Matrimonial Mutual Association of Texas v. Rutherford, 41 S.W. 2nd 719.

We submit to the Court that the matters urged in respondent's Plea in Abatement are each and all questions of fact, and that the Honorable County Judge of the County Court of Nueces County, Texas, erred in determining such facts without the hearing of evidence thereon and that the judgment thereby rendered is erroneous as having no evidence to support it. It should be further noted that in all events the fact issues here involved should have been submitted to the jury, requested by petitioner, for their determination, Revised Civil Statutes of Texas, 1925, Article 2123.

Point 3.

THE COUNTY COURT ERRED IN DENYING PETITIONER THE RIGHTS ACCORDED HIM BY VIRTUE OF THE FEDERAL FAIR LABOR STANDARDS ACT of 1938, IN THAT:

(A) THE COURT DID NOT HEAR ANY EVIDENCE IN SUPPORT OF PETITIONER'S CONTENTIONS.

(B) THE FEDERAL FAIR LABOR STANDARDS ACT of 1938 PROVIDES THAT AN EMPLOYEE "ENGAGED IN COMMERCE OR IN THE PRODUCTION OF GOODS FOR COMMERCE" SHALL BE PAID TIME AND A HALF FOR OVERTIME.

(A)

In view of the first point in the argument showing, we trust, the denial of due process occasioned by the arbitrary action of the County Court it goes without saying that any judgment rendered by such a summary proceeding should be reversed. Likewise, when a right is claimed in a State Court

arising under a statute of the United States, a question is presented reviewable by this Court, Supreme Lodge, etc., v. Knights of Pythias of North America, etc., 102 Miss. 280, 59 So. 88. Accordingly, it is the contention of your petitioner that inasmuch as the County Court did not give the Federal Fair Labor Standards Act of 1938, Title 29, Ch. 8, U.S.C.A., and its applicability to the factual situation involved in the case at Bar the full, serious, consideration due such law that this Court, in view of the Knights of Pythias case above cited, should issue certiorari and accord the matter the due consideration it warrants.

(B)

The County Court not having permitted the introduction of evidence this point must be discussed as an abstract proposition accompanied by assumption of facts--which facts would have been proven had not the County Court acted so summarily in reaching its decision. Assuming then that it could be proved, as alleged, that your petitioner transferred bales of compressed cotton from respondent's plant and warehouses a distance of approximately two miles to ships docked in Corpus Christi's harbor, which ships subsequently carried the said cotton to points outside of the State of Texas, and that your petitioner received from respondent, Port Compress Company, twenty-five cents an hour for all hours worked, and that for five successive weeks he worked a substantial number of hours in excess of forty-four hours in any one week, then----the question is, "Is petitioner, Roland, entitled to pay at the rate of one and a half times his regular rate of pay for overtime as provided by Section 207 (a) of the Federal Fair Labor Standards Act."

Before answering the question presented we must first ascertain whether or not his duties were such as to come within the coverage of the Act which applies to the "employees who are engaged in commerce or in the production of goods for commerce,"

Section 206 (a), Title 29, Ch. 8, U.S.C.A. The term "commerce" as defined by the Act, Section 203 (b), means "trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof." Employee work of most any type done on or in connection with goods that flow in commerce comes within the comprehensive term of "production" and thus makes such person and/or his employer subject to regulation by Federal laws enacted by virtue of the commerce clause of the United States Constitution. In Stafford v. Wallace, 258 U.S. 495, (which case upheld the constitutionality of the Packers and Stockyards Act of 1921; which Act provided for the supervision by Federal authority of the business of the commission men and of the live stock dealers in the great stockyards of the country) this Court said, "The commission men are essential in making the sales, without which the flow of the current (of commerce) would be obstructed, and this, whether they are made to packers or dealers." In view of that decision it is the opinion of your petitioner that his job of transferring cotton to ships destined to leave the State was an essential element in the movement of cotton from Texas to places outside thereof, and thus that he is entitled to the benefits and regulations imposed by the Federal Fair Labor Standards Act.

It is recognized by your petitioner that Section 207 (c) of the Federal Fair Labor Standards Act provides, "In the case of an employer engaged in----the ginning and compressing of cotton,-----the provisions of subsection (a) (which subsection provides an employee shall be paid at the rate of one and one-half times his regular rate of pay for all hours worked in excess of forty-four (44) hours in any one week) shall not apply to his employees in any place of employment where he is so engaged;-----." At first blush it might seem, in view of Section 207 (c), that the respondent, Port Compress Company, is exempt from the Act, but when the legislative history of the Act is considered, in-

cluding the Congressional debates in regard to such exemption, it is to be seen that the law means as it reads, that is, that the exemption applies only to employees in the place of the compressing operations or so closely associated therewith as to become a part of the compressing operations------and, thus excludes from such exemption those employees performing non-associated functions, as in the case at Bar, of driving loaded tractors from plant and warehouse to the ship docks. The provision of Section 207 (c) has been mentioned at this time merely in anticipation of respondent's answer to this petition for Writ of Certiorari, and should your petitioner be correct in the anticipated defense of respondent, then he shall be pleased to submit a more full brief on this provision after the filing of respondent's answer.

CONCLUSION

As the case now stands it appears to your petitioner that the Federal Fair Labor Standards Act did vest in him a right for additional compensation for overtime--which right the County Court did deny by failing not only to give proper consideration to the Federal Fair Labor Standards Act itself, but by arbitrarily deciding questions of fact material to the entire case and decision without the taking by said Court of any evidence whatsoever. Such a miscarriage of justice, petitioner submits for the reasons set forth in the petition, presents a case that calls for the exercise of this Court's power of review.

Respectfully submitted,

Jay Kirkman, Corpus Christi, Texas

Lee Freeman, Washington, D.C.

Gerald S. Gordon, Houston, Texas

Jack K. Pedigo, Corpus Christi, Texas

William E. Potter, Ann Arbor, Michigan

APPENDIX 1.

ARTICLE 1819, REVISED CIVIL STATUTES OF TEXAS 1925, AS AMENDED.

Article 1819. The appellate jurisdiction of the Courts of Civil Appeals shall extend to all civil cases within the limits of their respective districts of which the District Courts and County Courts have or assume jurisdiction when the amount in controversy or the judgment rendered shall exceed One Hundred Dollars exclusive of interest and costs.

APPENDIX 2.

ARTICLE 2123, REVISED CIVIL STATUTES OF TEXAS 1925.

Article 2123. The right to trial by jury shall remain inviolate, subject to the following rules and regulations.

APPENDIX 3.

ARTICLE 2178, REVISED CIVIL STATUTES OF TEXAS 1925.

Article 2178. Cases brought up from inferior courts shall be tried de novo.

APPENDIX 4.

ARTICLE 2249, REVISED CIVIL STATUTES OF TEXAS 1925.

Article 2249. An appeal or Writ of Error may be taken to the Court of Civil Appeals from every final judgment of the district court in civil cases, and from every final judgment in the county court in civil cases of which the county court has original jurisdiction, and from every final judgment of the county court in civil cases in which the court has appellate jurisdiction, where the judgment or amount in controversy exceeds one hundred dollars exclusive of interest and costs.

APPENDIX 5.

ARTICLE 2388, REVISED CIVIL STATUTES OF TEXAS 1925.

Article 2388. The pleadings shall be oral, except where otherwise specially provided; but a brief statement thereof may be noted on the docket.

APPENDIX 6.

JUDICIAL CODE, AS AMENDED, TITLE 28, SECTION 344 (b), U.S.C.A.

Sec. 344 (b). It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph.

APPENDIX 7.

FAIR LABOR STANDARDS ACT OF 1938, TITLE 29, CH. 8, U.S.C.A.

Sec. 203 (b). "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof.

Sec. 206 (a). Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates--

(1) during the first year from the effective date of this section, not less than 25 cents an hour,

(2) during the next six years from such date, not less than 30 cents an hour,

(3) after the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under section 208, whichever is lower, and

(4) at any time after the effective date of this section, not less than the rate (not in excess of 40 cents an hour) prescribed in the applicable order of the Administrator issued under section 208.

(5) if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employees prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Administrator, or his authorized representative, shall have power to make such regulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers.

Sec. 207 (a). No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce--

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

Sec. 207 (c). In the case of an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cottonseed, or in the processing of sugar beets, sugar beet molasses, sugarcane, or maple sap, into sugar (but not refined sugar) or into syrup, the provisions of subsection (a) shall not apply to his employees in any place of employment where he is so engaged; and in the case of an employer engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables, or in the first processing, within the area of production (as defined by the Administrator), of any agricultural or horticultural commodity during seasonal operations, or in handling, slaughtering, or dressing poultry or livestock, the provisions of subsection (a), during a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, shall not apply to his employees in any place of employment where he is so engaged.

SUBJECT INDEX

Page

Summary Statement of Matter involved 3

Reasons Relied Upon for Denial of the Writ 5-7

Argument—Point One 5

Argument—Point Two 8

Conclusion 11

TABLE OF CASES

Caffarelli Bros. v. Lyons Bros. Bread Co., 198 S. W. 685 6

Howell v. Johnson, 46 S. W. (2) 403 6

Faulkner v. Little Rock Furniture Mfg. Co., 32 Fed. Supp., 590, 591 9

TABLE OF STATUTES

Fair Labor Standards Act of 1938, Ch. 676, Sec. 13, 52 Stat. 1060, Title 29, Sec. 213, 29 U. S. C. A. Sec. 213 8

Fair Labor Standards Act of 1938, Title 29, Ch. 8, U. S. C. A., Sec. 207(c) 10

Sec. 304, Title 49 U. S. Code, 49 U. S. C. A., Sec. 304 8-9

Supreme Court of the United States

OCTOBER TERM, 1940

No. 929

JAMES W. ROLAND,
Petitioner and Appellant below,

vs.

PORT COMPRESS COMPANY,
Respondent and Appellee below.

Reply to Petition for Writ of Certiorari to the County Court of Nueces County, Texas, and Brief in Support Thereof.

TO THE HONORABLE CHARLES EVANS HUGHES, CHIEF JUSTICE OF THE UNITED STATES, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your respondent respectfully shows:

I.

Summary Statement of the Matter Involved

Petitioner, James W. Roland, was employed by the Port Compress Company on the 29th day of July, 1939, and worked for a period of slightly more than five weeks. Under the terms of his employment, as orally plead below, petitioner's duties were to transfer, by

means of a tractor trailer, compressed bales of cotton from the Port Compress Company's plant to shipside at the Port of Corpus Christi, the port being approximately two miles from the compress plant. Petitioner instituted suit for overtime, at the rate of time and a half, under the Fair Labor Standards Act of 1929, Title 29, Chapter 8, et seq., U. S. C. A., in the Justice of the Peace Court in Harris County, Texas, the case subsequently being removed for trial to the Justice of the Peace Court in Nueces County, where, after trial on the merits, on oral pleadings, judgment was entered in favor of the Port Compress Company, from which an appeal was duly taken to the County Court of Nueces County, Texas, where the trial was heard de novo, under appropriate State Statutes, on December 7, 1940. Petitioner plead orally substantially as in the Justice Court, whereupon respondent presented its plea in abatement and plead orally, and the Court then and there sustained the contentions of respondent and dismissed this cause without the hearing of evidence and after considering only the oral pleadings of the parties and the plea in abatement. The record brought forward fails to contain the substance of the oral pleadings, either of petitioner or of respondent, and does not contain respondent's plea in abatement; nor does the record contain a complete transcript of matters transpiring on the trial in the Justice's Court.

The record contains a purported deposition of petitioner (Tr. pp. 5-9), which occupies no proper place in the record, since the deposition was not offered in evidence and its contents not heard by the trial Court.

Respondent was not apprised that the motion for new trial (Tr. p. 12), was filed, nor was it apprised of the hearing thereon, nor of the order overruling same, nor of the request for findings of fact and conclusions

of law, nor of the preparation and filing of such by the trial Judge (Tr. pp. 13-14), until long after the term at which such cause had been heard had ended and, in fact, not until notice was given of the filing of the petition for writ of certiorari.

II.

Reasons Relied Upon for Denial of the Writ.

The petition should be denied, for the following reasons:

1. The pleadings in the Court below being oral, the Appellate Court must presume that the order of dismissal was correct and in conformity with the pleadings.

ARGUMENT—Point One

The trial Court having heard petitioner's oral pleadings, under which, as found by the Court, petitioner attempted to plead a cause of action under the Wages and Hours Act, for time and a half overtime and, among other allegations, as shown in petitioner's summary statement of the matter involved, having plead that petitioner was employed to transfer, by means of a tractor trailer, cotton from the Port Compress Company's plant to ships docked at shipside at the Port of Corpus Christi, and having heard respondent's oral reply thereto, as well as respondent's plea in abatement, and having thereupon sustained respondent's plea in abatement, without hearing further evidence, it will be presumed by the Appellate Court that the order of dismissal was based upon and supported by the pleadings, and that the Court's findings of fact and conclusions of law had support therein as well. It will, also, be presumed that the trial Court was cor-

rect in summarily dismissing the suit and hearing no evidence thereon, and that, upon the basis of the pleadings heard by the trial Court, petitioner was not entitled to the relief sought.

In the case of *Caffarelli Brothers v. Lyons Brothers Bread Company,* 198 *Southwestern* 685 (Court of Civil Appeals, San Antonio), the Court holds:

> "It is the duty of this Court to presume that the issues made by the pleadings of the parties were consistent with the orders or rulings of the trial court which we find in the transcript in all cases originating in the Justice Court, where oral pleadings are allowed. Maass v. Salinsky, 67 Tex. 290, 3 S. W. 289; Silberg v. Trilling, 82 Tex. 523, 18 S. W. 591; Patty v Gibson, 23 S. W. 392; G. C. & S. F. Ry. Co. v. Goodman, 189 S. W. 326."

In the case of *Howell vs. Johnson,* 46 *Southwestern* (2d) 463 (Court of Civil Appeals, Beaumont), the Court said:

> "As the case originated in Justice Court, and as appellee filed no written pleadings in the County Court, we must presume, in the absence of an affirmative showing in the transcript to the contrary, that appellee's pleadings were sufficient to support the judgment in his favor and all conclusions of fact and law filed by the Court in support of his judgment. Alvis v. Harris Hdwe. Co., 218 S. W. 538, 539."

The trial Court, in its purported findings of fact and conclusions of law, sets out that it finds no facts, for the reason that the cause was determined on the pleadings. The trial Court stated that the plaintiff plead a cause of action arising under the Federal Fair Labor Standards Act for unpaid overtime wages, and that defendant's plea in abatement addressed to the case, as plead by petitioner, was sustained, and that the cause was dismissed, the Court having found as a matter of law that the cause should be dismissed for the follow-

ing reasons: (First) That defendant was not within the scope and regulations of the Federal Fair Labor Standards Act, in that defendant company was engaged in intrastate commerce; (Second) That defendant's services were done within the area of production of the crop commodity; (Third) That plaintiff was not employed by the defendant in excess of fourteen weeks during the entire year; and (Fourth) That defendant is engaged in compressing cotton and is exempt from the regulations of the Fair Labor Standards Act, (Tr. pp. 13-14).

The trial Court must pass upon the matters presented to it by the pleadings and, since the trial Court heard the pleadings and entered its order of dismissal, it must be presumed that the order of dismissal was justified, and that the Court was justified in making the findings of fact and conclusions of law as made by it. Any other rule, where a cause is submitted upon oral pleadings, would be to permit an Appellate Court to hear evidence and new pleadings, and substitute its judgment for that of the trial Court. The presumption is that the case was fairly heard and fairly disposed of upon the pleadings presented to the trial Court; petitioner has had his day in Court, has been deprived of no rights, and must abide the dismissal.

2. The order of dismissal below was a correct judgment, since petitioner has shown that he plead orally that his work with respondent was to transfer, by means of a tractor trailer, compressed cotton from the Port Compress Company's plant to various ships docked at the Port of Corpus Christi, bound to points outside the State of Texas, and, accordingly, he was entitled to no relief at time and a half for overtime under the Wages and Hours Act, but was subject to the regulations of the Interstate Commerce Commission, pur-

suant to the provisions of Section 304, of Title 49, U. S. C. A.

ARGUMENT — Point Two

In his summary statement petitioner shows the Court that his work with the Port Compress Company, respondent, was to transfer by means of a tractor trailer, cotton from the Port Compress Company's plant to various ships docked at the Port of Corpus Christi and in his brief (Page 11, Section B), petitioner stated that it could be proved, as alleged, that he transferred bales of compressed cotton from the respondent's plant a distance of approximately two miles to ships docked in the harbor at Corpus Christi, which ships subsequently carried the cotton to points outside the State of Texas, which facts were likewise alleged orally upon the trial.

It is obvious, under such state of facts, that petitioner cannot recover, for the reason that, under the provisions of the Fair Labor Standards Act of 1938, Chapter 676, Section 13, 52 Stat. 1060, Title 29, Section 213, U. S. Code and Amendments thereto, 29 U. S. C. A. Sec. 213, the petitioner and those in his class are specially exempted from the provisions of the fair Labor Standards Act.

Section 213, Title 29, U. S. Code, 29 U. S. C. A., Section 213, provides (so far as applicable):

> "(b) The provisions of Section 207 shall not apply with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service, pursuant to the provisions of Section 304 of Title 49. U. S. Code."

Section 304 of Title 49 U. S. Code, 49 U. S. C. A., Section 304, provides (insofar as applicable):

> "Powers and Duties of Commission. (a) * * * It shall be the duty of the Commission

* * * (3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation and to that end, prescribe qualifications and maximum hours of service of employees and standards of equipment. * * * "

In *Faulkner v. Little Rock Furniture Mfg. Co.*, 32 *Federal Supplement*, 590, *at* 591, the Court, after quoting the above statutes in a case where plaintiff was an assistant truck driver or helper employed in delivering goods, wares and merchandise manufactured by the defendant, and in bringing to defendant from out of the State certain raw materials and supplies, from which it manufactured furniture, held:

"Congress, by legislation, having empowered the Interstate Commerce Commission, if need is found, to prescribe maximum hours of service for employees situated as the plaintiff and exempted them from the provisions of the Fair Labor Standards Act of 1938, there is presented a different situation from that where, by the Constitution of the United States, the States have delegated the power to Congress to legislate upon a subject, but where Congress has failed to do so and left the field unoccupied, in which event, it has been uniformly held that the States themselves have a right to legislate upon the subject. In such a case, which is clearly a delegation of authority, there is impliedly a reservation of authority in the States to legislate upon the subject, until such time as Congress sees fit to act."

"In Sec. 213(b), Title 29, U. S. Code, 29 U. S. C. A., Section 213(b), there is no such reservation, and none can be implied, and it appearing that under the provisions of Section 304 (a) (3) of Title 49, U. S. Code, 49 U. S. C. A., Sec. 304 (a) (3), Congress has delegated to the Interstate Commerce Commission the power to make regulations for qualifications and maximum hours of service for such employees, the whole field is occupied, and it further appearing that under the provisions of the Fair Labor Standards Act of 1938, as

amended (August 9, 1939, Chap. 605, 53 Stats. 1266, 29 U. S. C. A. Sec. 213), the regulation of qualifications and maximum hours of service of employees with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service, have been exempted from the provisions of the Fair Labor Standards Act of 1938, there is and could be no reservation of power for the administrator of the Fair Labor Standards Act of 1938 to act, until such time as the Interstate Commerce Commission shall see fit to act. * * * "

"That the Interstate Commerce Commision has power to fix maximum hours of service if need is found, and if they have not done so, no power is reserved or delegated to the administrator of the Fair Labor Standards Division of the Department of Labor to do so, and the employees acquire no rights under the Fair Labor Standards Act of 1938. Therefore, the plaintiff cannot recover and this action under the maximum hours section of the Fair Labor Standards Act of 1938 must be and is dismissed."

It is recognized by petitioner in his brief (pp. 12-13), that Section 207 (c) of the Fair Labor Standards Act provides:

"In the case of an employer engaged in * * * the ginning and compressing of cotton * * * the provision of subsection (a) (which subsection provides an employee shall be paid at the rate of one and one-half times his regular rate of pay for all hours worked in excess of forty-four hours in any one week) shall not apply to his employee in any place of employment where he is so engaged; * * * "

But petitioner contends that the exemption applies only to employees *in* the place of the compressing operations, or so closely associated therewith as to be a part of the compressing operations and that, accordingly ,an employee such as petitioner is excluded from the exemption, because he is an employee performing

a non-associated function, that of driving loaded tractors from the compress plant and warehouse to the ship docks. It is obvious that petitioner, in his anxiety to place himself in a non-associated function of compressing, has clearly placed himself as the operator of a motor vehicle of a private carrier, carrying property into commerce and, accordingly, excludes himself from the provisions of the Fair Labor Standards Act, by so placing himself within a field occupied by the Interstate Commerce Commission.

Accordingly, since the order of dismissal entered by the trial Court is clearly correct, on the theory that petitioner is entitled to no relief under the Wages and Hours Act, as sought by him, the order of dismissal should not be disturbed, irrespective of the reasons entertained by the trial judge in entering the order. In other words, a correct result having been reached by the trial Court, it will not be disturbed, even though the trial Court may have entertained an improper reason for its entry at the time.

CONCLUSION

The record indicating no miscarriage of justice but a correct ruling, respondent submits that the petition should be denied.

Respectfully submitted,

KEMP, LEWRIGHT, DYER, WILSON & SORRELL

By Frank M. Kemp

F. M. Kemp, Corpus Christi, Texas.
Counsel for Respondent

S. E. Dyer

S. E. Dyer, Corpus Christi, Texas
Of Counsel